Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1159

THE ANDERSON COMPANY and ALICE SCRANTON EASTMAN ANDERSON,

Petitioners,

against

JOHN P. CHASE, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY BRIEF FOR PETITIONERS

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TABLE OF CONTENTS

	PAGE
Introduction	1
POINT I—This petition raises legal issues, and not fact questions decided below	2
POINT II—The question whether a private right of action may be maintained under the Investment Advisers Act is presented by this case	2
Conclusion	3

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Introduction

Respondent argues that the case is not appropriate for Supreme Court review, claiming that, first, certain of the questions presented are fact questions, foreclosed by the fact findings below, and second, the question of whether or not there is a private right of action under the Investment Advisers Act is not presented on this record.

These arguments are wholly without merit. There is no factual dispute here. We rely on the fact findings of the District Court, and submit that on those facts, the District

Court's error appears as a matter of law. If this Court agrees that the District Court erred, the question *vel non* of the existence of a private right of action under the Investment Advisers Act must necessarily be confronted.

POINT I

This petition raises legal issues, and not fact questions decided below.

Respondent argues that the issues in the petition are solely factual ones, foreclosed by the findings below. In this regard, respondent adverts to the District Court's statement regarding the credibility of a witness on behalf of petitioners. The reference is highly misleading as witness credibility is not at issue here. The issue of whether an investment adviser may orally change a written contract with his clients is presented here not on the statements of a witness for petitioners, but rather on the fact findings of the District Court, and the written agreement between the parties. (See, e.g., page 9 of our petition.) Thus, for example, we have shown that the lower Court found that respondent's account manager and Anderson orally agreed to the provision of far less extensive investment advisory services than those required by the contract. As the contract itself forbids oral amendment of its terms, and the statutory scheme requires written contracts for the protection of investors, the District Court's error is revealed as a matter of law, and not of witness credibility.

POINT II

The question whether a private right of action may be maintained under the Investment Advisers Act is presented by this case.

Respondent argues that the question of the existence, *vel non*, of a private right of action under the Investment

Advisers Act is not presented by this case. In this regard, respondent quotes the District Court opinion. The quotation is misleading in the extreme. The District Court stated that the question was unnecessary to its decision. This was so, only, of course, because the District Court dismissed the Complaint for other reasons. However, this Court must necessarily confront the question of a private right of action if it decides to reverse the decision below.

CONCLUSION

For the reasons given, petitioners pray that a writ be granted to review the judgment below.

Respectfully submitted,

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March 8, 1976